

IN THE IOWA DISTRICT COURT FOR DICKINSON COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

BERNARD H. COHRS, and COHRS
CONSTRUCTION, INC., d/b/a COHRS
GRAVEL PIT,

Defendants.

LAW NO. CVCV023125

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (hereafter "DNR"), and for its claim against Defendants Bernard H. Cohrs and Cohrs Construction, Inc., d/b/a Cohrs Gravel Pit (hereafter "Cohrs Construction, Inc."), states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendants Bernard H. Cohrs and Cohrs Construction, Inc. arising from violations of Iowa solid waste and air quality laws on property owned by Defendant Bernard H. Cohrs located in Excelsior Township, Dickinson County, Iowa. The violations involve illegal disposal and open burning of solid waste, including but not limited to trade waste and household waste.

Parties

2. The State of Iowa is a sovereign state of the United States of America.

3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Bernard H. Cohrs is an Iowa resident who resides at 104 Beachcomber Drive, Lake Park, Dickinson County, Iowa 51347. Defendant Bernard H. Cohrs is the president of Defendant Cohrs Construction, Inc., and personally participates in, controls, and directs Defendant Cohrs Construction, Inc.

5. Defendant Cohrs Construction, Inc., is an Iowa corporation located at 1447 Highway 86 in Spirit Lake, Iowa 51360. Cohrs Construction, Inc. is a gravel and concrete crushing operation.

Jurisdiction

Solid Waste Regulations

6. Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4 prohibit dumping or depositing or permitting dumping or depositing of solid waste at any place other than a facility permitted by the DNR, unless otherwise permitted by rule.

7. Under Iowa Code section 455B.304, the Environmental Protection Commission of the DNR is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relative to the treatment and disposition of solid waste. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 100-119 concerning solid waste management and disposal.

8. The director of the DNR is authorized under Iowa Code section 455B.307(2) to issue any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455B, Division IV, Part 1, or the rules issued under that part.

9. The Attorney General is authorized under Iowa Code section 455B.307(2), on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order

of the director or prosecuting any person for a violation, of Iowa Code chapter 455B, Division IV, Part 1, or the rules issued under that part. Under Iowa Code section 455B.307(3), any person who violates any provision of Iowa Code chapter 455B, Division IV, Part 1, or any rule or any order adopted pursuant to that part is subject to a civil penalty for each day of violation not to exceed Five Thousand Dollars (\$5,000.00) for each day of violation.

Air Quality Regulations

10. Under Iowa Code section 455B.133(2), the Environmental Protection Commission of the DNR is required to adopt rules pertaining to the evaluation, abatement, control, and prevention of air pollution. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 20-30 concerning air quality.

11. 567 Iowa Admin. Code 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, unless a variance has been granted under 567 Iowa Admin. Code 23.2(2), or one of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

12. The director of the DNR is authorized under Iowa Code section 455B.134(9) to issue orders consistent with rules to cause the abatement or control of air pollution.

13. Under Iowa Code section 455B.146, the Attorney General is authorized, on request of the DNR, to institute a civil action in district court for injunctive relief to prevent any further violation of any order, permit, or rule of the department, or for the assessment of a civil penalty for each day of violation not to exceed Ten Thousand Dollars (\$10,000.00) for each day of violation, or for both injunctive relief and civil penalties.

Facts

14. On May 9, 2002, August 8, 2002, and September 10, 2002, DNR officials received anonymous complaints of improper solid waste disposal and open burning at a Cohrs Construction gravel operation located in Section 21, Township 100N, Range 37 West, Diamond Lake Township, Dickinson County, Iowa. On September 26, 2002, DNR officials inspected the site and observed an area where open dumping of solid waste was occurring. The waste consisted of household items, including mattresses, chairs, pillows, a fan, newspapers, magazines, boxes, cans, appliances, and general household garbage. In addition, construction/industrial waste including empty barrels and tanks, piping, shingles, wood waste, railroad ties, siding and various metals were observed. Several areas were observed to be smoldering and hot ashes were present. It appeared that many items had been burned, including the shingles, plastic piping, wood waste and railroad ties. In addition to the solid waste, DNR officials also observed tree stumps, branches, and yard waste from the cities of Arnolds Park and Okoboji with no composting attempts being made. It appeared that the yard waste was pushed into piles for burning and burying. Following the inspection, DNR officials learned that defendants had been paid by the cities to dispose of the yard waste. In response, DNR officials issued a Notice of Violation to Defendants Bernard H. Cohrs and Cohrs Construction, Inc. on October 7, 2002. The Notice of Violation required defendants to cease accepting yard or tree waste from outside sources and to cease open dumping and/or allowing open dumping on the property. It further required defendants to clean up the property and take the household waste, construction waste and metals to a landfill or recycling center. It allowed the landscape waste, concrete and trees to be left on site for proper composting or burial.

15. On January 31, 2003, the DNR issued Administrative Order No. 2003-AQ-06/2003-SW-01 to defendants. The order required defendants to stop any and all open burning of prohibited solid waste at the property located in Section 21, T100N, R37W, Diamond Lake Township, Dickinson County or any other site in the State of Iowa unless the burning is allowed by a specific exemption or variance in accordance with 567 Iowa Admin. Code 23.2; to stop any and all improper dumping or depositing or permitting of dumping or depositing of solid waste at the property located in Section 21, T100N, R37W, Diamond Lake Township, Dickinson County or any other site in the State of Iowa; to dispose of all solid waste and landscape waste in a manner consistent with 567 Iowa Admin. Code 23 and 567 Iowa Admin. Code 101 in the future; and to pay an administrative penalty of Seven Thousand Dollars (\$7,000.00) subject to appeal rights stated in the order. A copy of Administrative Order No. 2003-AQ-06/2003-SW-01 is attached hereto as Exhibit A, and by this reference incorporated herein. Defendants did not appeal the order, and as a part of a settlement agreement defendants entered into Consent Amendment to Administrative Order No. 2003-AQ-06/2003-SW-01 on November 6, 2003. The Consent Amendment allowed for a Supplemental Environmental Project in the amount of Seven Thousand Dollars (\$7,000.00) in lieu of the penalty payment. All other aspects of the original order remained in effect. A copy of Consent Amendment to Administrative Order No. 2003-AQ-06/2003-SW-01 is attached hereto as Exhibit B, and by this reference incorporated herein.

16. On August 14, 2006, DNR officials received a complaint alleging that Defendant Cohrs Construction was open burning at an old gravel pit in Excelsior Township in Dickinson County. The property is located in the Northwest Quarter (NW¼) of Section One (1), Township Ninety-nine (99) North, Range Thirty-eight (38) West of the 5th P.M., Dickinson County, Iowa.

In response, DNR officials investigated the complaint and observed the open burning of miscellaneous solid waste including, but not limited to, trade waste, household waste, a bike, an air conditioner, a recliner, beverage containers, and a window frame. The open burning was taking place in a small pit located south of the main repair shops on the property. DNR officials further observed indications of past open burning at the site as evidenced by the size of the ash pile and materials observed in the pit. Following the inspection, DNR officials verified with the Dickinson County Assessor's Office that the property is owned by Defendant Bernard H. Cohrs.

Violations

17. Defendants have violated Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order No. 2003-AQ-06/2003-SW-01 by dumping or depositing or permitting the dumping or depositing of solid waste on the property described in paragraph sixteen (16) above.

18. Defendants have violated 567 Iowa Admin. Code 23.2(1) and Administrative Order No. 2003-AQ-06/2003-SW-01 by allowing, causing, or permitting open burning of combustible materials on the property described in paragraph sixteen (16), despite the fact that no variance has been granted under 567 Iowa Admin. Code 23.2(2), and none of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

WHEREFORE, plaintiff requests that the Court:

- a. assess civil penalties against defendants not to exceed the statutory maximum pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1) and Administrative Order No. 2003-AQ-06/2003-SW-01;


- b. assess civil penalties against defendants not to exceed the statutory maximum pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order No. 2003-AQ-06/2003-SW-01;
- c. issue a permanent injunction pursuant to Iowa Code section 455B.146 enjoining defendants from further violations of the provisions of 567 Iowa Admin. Code 23.2(1) and Administrative Order No. 2003-AQ-06/2003-SW-01; and,
- d. issue a permanent injunction pursuant to Iowa Code section 455B.307(2) enjoining defendants from further violations of the provisions of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order No. 2003-AQ-06/2003-SW-01.

Plaintiff further requests that the Court tax the costs of this action to defendants and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General


DAVID L. DORFF, AT0002110
Assistant Attorney General
Environmental Law Division
Lucas State Office Building
321 E. 12th St., Ground Floor
Des Moines, Iowa 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail: ddorff@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: BERNARD H. COHRS AND COHRS CONSTRUCTION, INC. d/b/a COHRS GRAVEL PIT	ADMINISTRATIVE ORDER NO. 2003-AQ- 06 NO. 2003-SW- 01
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TO: Bernard H. Cohrs, Owner and Registered Agent
Cohrs Construction, Inc.
15700 N. Tradewind Drive
Spirit Lake, Iowa 51360

I. SUMMARY

This order requires you to stop any and all open burning of prohibited solid waste at the property located in Section 21, T100N, R37W, Diamond Lake Township, Dickinson County or any other site in the State of Iowa unless the burning is allowed by a specific exemption or variance in accordance with 567 Iowa Administrative Code (IAC) 23.2; to stop any and all improper dumping or depositing or permitting of dumping or depositing of solid waste at the property located in Section 21, T100N, R37W, Diamond Lake Township, Dickinson County or any other site in the State of Iowa; to dispose of all solid waste and landscape waste in a manner consistent with 567 IAC 23 and 567 IAC 101 in the future; and to pay a penalty of \$7,000.00 subject to your appeal rights stated in this order.

Relating to technical requirements:

Cindy Martens, Field Office 3
Iowa Department of Natural Resources
1900 North Grand; Gateway North Mall
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to appeal rights:

Kelli Book
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. STATEMENT OF FACTS

1. Bernard Cohrs owns and operates Cohrs Construction, Inc. d/b/a Cohrs Gravel Pit (Cohrs). Cohrs is a gravel operation and concrete crushing operation located in Section 21, T100N, R37W, Diamond Lake Township, Dickinson County, Iowa.

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2. DNR Field Office 3 received three anonymous complaints over a four month period alleging improper solid waste disposal and open burning at the Cohrs site. The complaints were received on May 9, 2002, August 8, 2002, and September 10, 2002. On September 26, 2002, Cindy Martens, DNR Field Office 3, visited the Cohrs site. Wes McClure, facility superintendent, accompanied Ms. Martens during her visit. Mr. McClure showed Ms. Martens the area where open dumping was occurring. Ms. Martens observed several areas smoldering, and hot ashes were present. She observed many household items, including mattresses, chairs, pillows, a fan, newspapers, magazines, boxes, cans, appliances, and general household garbage. Ms. Martens observed household waste dumped by local residents. Ms. Martens also noted construction/industrial waste including empty barrels and tanks, piping, shingles, wood waste, railroad ties, siding and various metals. Ms. Martens noted it appeared the open dumping had been occurring for some time. She also noted it appeared many items had been burned including the shingles, plastic piping, wood waste, and railroad ties. In addition to the solid waste, Ms. Martens observed tree stumps and branches at the site. Yard waste was piled from the cities of Arnolds Park and Okoboji with no composting attempts made. Ms. Martens noted it appeared that the yard waste was pushed into piles for burning and burying.

3. Following the inspection, Ms. Martens discovered Cohrs had been paid by the cities to dispose of the yard waste. Wanda Thielen, Deputy City Clerk for Arnolds Park, informed Ms. Martens that the city paid Cohrs the following amounts for yard waste disposal: \$379.00 in 2000, \$280.00 in 2001, and \$304.00 in 2002. Dennis Daly, City Clerk/Administrator for Okoboji, reported the city paid Cohrs the following amounts for yard waste disposal: \$1,662.00 in 1999, \$1,762.00 in 2000, \$2,161.00 in 2001, and \$621.00 in 2002.

4. On October 7, 2002, Cohrs was issued a Notice of Violation letter for the open burning and improper solid waste disposal violations Ms. Martens observed during the September 26, 2002 inspection. The letter required Cohrs to cease accepting yard or tree waste from outside sources and to cease open dumping and/or allowing open dumping on the property. Cohrs was required to clean up the property and take the household waste, construction waste and metals to the landfill or recycling center. The letter allowed the landscape waste, concrete, and trees to be left on site for proper composting or burial. The letter informed Cohrs the matter was being referred to DNR Central Office for possible enforcement action.

5. On December 6, 2002, DNR Field Office 3 received a letter from Cohrs informing the DNR that the area has been cleaned up and a sign forbidding open dumping had been placed at the site. Cohrs also submitted the landfill receipt from the Dickinson County Landfill for the clean up of the area.

6. Cohrs had prior knowledge of the open burning and improper disposal regulations. On December 1, 2000, DNR Field Office 3 received a complaint alleging the improper disposal of construction and demolition waste by Cohrs. Alan Lemke, DNR Field

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Office 3, contacted Mr. Cohrs and informed him of the regulations that applied to his operation.

III. CONCLUSIONS OF LAW

1. This order is issued pursuant to Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part and Iowa Code chapter 455B, Division II, (air quality) and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties.

2. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.

3. 567 IAC 101.3 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. During her inspection on September 26, 2002, Ms. Martens observed a large amount of solid waste, including but not limited to, mattresses, shingles, appliances, household garbage, and landscape waste, dumped on the Cohrs property. Cohrs did nothing to prohibit residents of the area from dumping solid waste on the property; therefore, Cohrs allowed the dumping. The above facts demonstrate non-compliance with this provision.

4. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

5. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). During her inspection on September 26, 2002, Ms. Martens noted smoldering piles of solid waste and observed evidence of past burning. The above facts disclose a violation of this provision.

IV. ORDER

THEREFORE, it is hereby ordered that Cohrs Construction, Inc. do the following:

1. Immediately stop any and all open burning of prohibited solid waste at the property located in Section 21, T100N, R37W, Diamond Lake Township, Dickinson County or any other site in the State of Iowa unless the burning is allowed by a specific exemption or variance in accordance with 567 IAC 23.2;

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2. Immediately stop any and all improper dumping or depositing or permitting of dumping or depositing of solid waste at the property located in Section 21, T100N, R37W, Diamond Lake Township, Dickinson County or any other site in the State of Iowa;
3. Dispose of all solid waste and landscape waste in a manner consistent with 567 IAC 23 and 567 IAC 101 in the future; and
4. Pay a penalty of \$7,000.00 subject to your appeal rights stated in this order

V. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$7,000.00 is assessed effective 30 days from receipt of this order by Bernard H. Cohrs and Cohrs Construction, Inc. d/b/a Cohrs Gravel Pit unless this order is appealed within that time, as provided in Part VI of this order. The penalty shall be paid within 60 days of receipt of this order, unless a timely appeal is filed. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Administrative Order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Cohrs has achieved an economic benefit from the improper disposal and illegal burning of solid waste. Cohrs received over \$7,000.00 during the last four years from Arnolds Park and Okoboji for improperly taking the cities' yard waste. Additionally, Cohrs saved time, labor, and landfill fees by not disposing of the solid waste properly. Based on these considerations, \$2,500.00 is assessed for this factor.

Gravity of the Violation – Improper disposal of solid waste and the open burning of solid waste can release toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. The violations threaten the integrity of the regulatory program because compliance with the open burning

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ISSUED TO: BERNARD H. COHRS AND COHRS CONSTRUCTION, INC. d/b/a COHRS
GRAVEL PIT

regulations is required of all persons in this state. Based on the above considerations, \$2,500.00 is assessed for this factor.

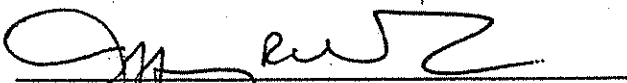
Culpability – Cohrs has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Cohrs was informed of the regulations in 2000, yet continued to improperly dispose of solid waste and illegally burn. Additionally, Cohrs collected at least \$7,000.00 from local communities through its improper activities. Based on the above considerations, \$2,000.00 is assessed for this factor.

VI. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138 and 561 IAC 7.5(1), a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the Department and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 567 IAC chapter 7.

VII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. The Department reserves the right to request that the Attorney General initiate legal action based on the violations alleged in this order as well as any subsequent violations if the order is violated, including failure to timely pay any penalty.


JEFFREY R. VONK, DIRECTOR
Iowa Department of Natural Resources

Dated this 31 day of
January, 2003.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

RECEIVED

IN THE MATTER OF:

BERNARD H. COHRS AND COHRS
CONSTRUCTION, INC. d/b/a COHRS
GRAVEL PIT


CONSENT AMENDMENT TO
ADMINISTRATIVE ORDER Nov 12 2003

NO. 2003-AQ-06 IOWA DEPARTMENT OF
NO. 2003-SW-01 NATURAL RESOURCES
FIELD OFFICE #3

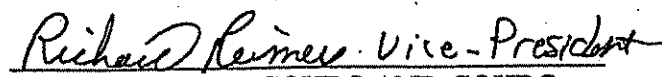
TO: Bernard H. Cohrs, Owner and Registered Agent
Cohrs Construction, Inc.
15700 N. Tradewind Drive
Spirit Lake, Iowa 51360

Administrative Order No. 2003-AQ-06/2003-SW-01 was issued to Bernard H. Cohrs and Cohrs Construction, Inc. d/b/a Cohrs Gravel Pit (Cohrs) on January 31, 2003. In lieu of a penalty payment, the Department of Natural Resources (Department) and Cohrs have agreed to the following Supplemental Environmental Project (SEP).

1. Cohrs shall donate construction and landscape supplies and labor in the amount of \$7,000.00 to the Department of Natural Resources Wildlife Unit.
2. Cohrs shall submit invoice receipts to the Department within 10 days of completion of the work at the Wildlife Units.
3. Cohrs shall complete the work at the Wildlife Units by December 1, 2003.
4. This Consent Amendment to Administrative Order No. 2003-AQ-06/2003-SW-01 is entered into knowingly and with the consent of Cohrs. For this reason, Cohrs waives its right to appeal this Consent Amendment to Administrative Order No. 2003-AQ-06/2003-SW-01.
5. In all other respects, Administrative Order No. 2003-AQ-06/2003-SW-01 remains in full force and effect.


JEFFREY R. VONK, DIRECTOR
Iowa Department of Natural Resources

Dated this 6 day of
November, 2003.


for BERNARD H. COHRS AND COHRS
CONSTRUCTION d/b/a COHRS GRAVEL PIT

Dated this 29 day of
Oct, 2003.

RECEIVED

EXHIBIT B

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